

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

The City of Albertville)

Albertville, Marshall County, Alabama)

Air Facility ID No. 711-0051-X002)

CONSENT ORDER NO.

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” or “ADEM”) and City of Albertville (hereinafter, “the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee is the permitted owner and/or operator of an Air Curtain Incinerator (hereinafter, “ACI”) located in Albertville, Marshall County, Alabama. The ACI is operating under the authority of ADEM Permit No. 711-0051-X002 (hereinafter, the “Permit”), issued on July 11, 2006 .

2. The Department is a duly constituted department of the State of Alabama pursuant to Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the State air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-3-.01(1)(a-i) states:

No person shall ignite, cause to be ignited, permit to be ignited, or maintain any open fire except as follows: (a) Open fires for the cooking of food for human consumption on other than commercial premises; (b) Fires for recreational or ceremonial purpose; (c) Fires to abate a fire hazard, providing the hazard is so declared by the fire department or fire district having jurisdiction; (d) Fires for prevention or control of disease or pest; (e) Fires for training personnel in the methods of fighting fires, provided that all requirements of ADEM Admin. Code R. 335-3-11-.02(12) are met; (f) Fires for the disposal of dangerous materials where there is no practical alternate method of disposal and burning is approved by the Director; (g) Fires set for recognized agricultural, silvicultural, range, and wildlife management practices; (h) Fires set in salamanders or other devices, utilizing only wood, vegetation, coal, propane, kerosene, fuel oil or used oil (used oil as defined in ADEM Admin. Code Chapter 335-14-17) as fuel, and used by construction or other workers for heating purposes; (i) Open fires specifically or expressly approved by the Director.

5. On May 26, 2005, the Department issued a Notice of Violation (NOV) to the Permittee for open burning of two separate piles of tree limbs on the property located approximately 100 feet from an ACI. This ACI, unit number 711-0051-X001 was permitted by the Department to the Permittee on April 16, 2003. On June 7, 2005, the Department received a response from the Permittee explaining that the piles ignited

accidentally and that the operators are very aware of the Department's no open burn regulations. The response further emphasized its commitment to operate the ACI within the parameters set by the Department. The Permittee later dismantled this unit on June 24, 2005, and replaced it with unit 711-0051-X002.

6. On August 5, 2009, the Department conducted an unannounced inspection of Permittee's ACI (711-0051-X002) and noted that a pile of wood waste and unauthorized material was burning next to the operating ACI. The Permittee's ACI operator explained to Department personnel that the pile began to burn accidentally during the start up phase of the ACI and that flames from the ACI became caught in the wind and sparks were carried to the adjacent pile of waste. Department personnel observed that no effort was being made to extinguish the open burning of the pile.

7. On August 13, 2009, the Department issued a NOV to the Permittee for the violations observed during the August 5, 2009, inspection and it requested a formal response from the Permittee as to why open burning of a waste pile was being conducted on the premises.

8. On September 4, 2009, the Permittee responded to the August 13, 2009 NOV and explained that during the night preceding the inspection, a spark ignited a pile of limbs located in close proximity of the ACI. Permittee's response further explained that the next morning, August 5, 2009, the Permittee's landfill supervisor noticed the burning pile of waste and attempted to push it into a single contained pile.

9. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

10. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

11. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. In arriving at this civil penalty, the Department has considered the following:

12. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** Open burning of waste was conducted at the site of Permittee's ACI and the Department considers this violation to be serious.

B. THE STANDARD OF CARE: By continuing open burning in such a manner as to not comply with the Permit, the Permittee did not exhibit a standard of care consistent with the requirements of ADEM Admin. Code R.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department does not have knowledge of any economic benefits that the Permittee received by conducting open burning.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts made by the Permittee to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has been cited by the Department's Air Division for other violations regarding operation of an ACI.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Code of

Alabama (1975), § 22-22A-5(18)c., as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$5,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with the terms, limitations, and conditions of Air Permit 711-0051-X002 issued on July 11, 2006, immediately upon the effective date of this Consent Order and continuing each and every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order,

to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. This Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information

shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

THE CITY OF ALBERTVILLE

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Onis "Trey" Glenn, III
Director

(Printed Name)

(Printed Title)

Date Signed: _____

Date Executed: _____